

Permit 51159

70451 &  
44624

Borden



# United States Department of the Interior

BUREAU OF RECLAMATION  
PACIFIC NORTHWEST REGION  
FEDERAL BUILDING & U.S. COURTHOUSE  
BOX 043-550 WEST FORT STREET  
BOISE, IDAHO 83724-0043



IN REPLY  
REFER TO:

PN 440

RECEIVED

DEC 19 1990

John and Doris Kokkeler  
27599 Cox Butte Road  
Junction City OR 97448

WATER RESOURCES DEPT.  
SALEM, OREGON

DEC 17 1990

Subject: Water Service Contract No. 1-07-10-W0817, Willamette Basin  
Project (Water Service Contract)

Dear Mr. and Mrs. Kokkeler:

Enclosed for your records is a fully executed original of Contract No. 1-07-10-W0817, which provides for an irrigation water supply from the Willamette Basin Project commencing with the 1991 irrigation season. Execution of this contract replaces Contract No. 14-06-100-6195, dated March 18, 1968, which served 31 acres of land.

If you have not yet contacted the Oregon State Water Resources Department for your permit to divert, we suggest you do so. We are furnishing that agency a conformed copy of the contract so they will be in a position to proceed with issuing the required permit to divert water.

If there are any questions regarding the terms or conditions set forth in the contract, please feel free to contact this office.

Sincerely,

FRANCIS E. PEDDE

Regional Director

Enclosure

cc: Director  
Oregon State Water  
Resources Department  
3850 Portland Road NE.  
Salem OR 97310 (w/copy of enclosure)

U.S. Army Corps of Engineers  
Attention: NPPEN-HH-R  
PO Box 2946  
Portland OR 97208

ACTIVE

United States  
Department of the Interior  
BUREAU OF RECLAMATION  
PACIFIC NORTHWEST REGIONAL OFFICE

Willamette Basin Project, Oregon  
(Project or office)

RECORD OF EXECUTION OF CONTRACT

Contractor John and Doris Kokkeler  
Contract No. 1-07-10-W0817 Date of contract December 13, 1990  
Estimated amount involved \$ 176.85 p.a.  
Purpose Water Service Contract

Remarks: Authority granted to Regional Director to approve and execute by Commissioner's faxogram of July 8, 1981, and RI 953.2.14, dated February 26, 1985.

Place Boise, Idaho Date 12/7/90

1. Contract transmitted to Field Solicitor for legal approval.

Acting  
James Budolfson, Regional Supervisor of Water, Power, and Lands  
(Title)

Place Boise, Idaho Date 12/11/90

2. Contract given legal approval.

[Signature]  
Field Solicitor

3. Contract executed and transmitted to the following:

Original contract PN 360  
Duplicate original to contractor  
Copy to: Director, Oregon Water Resources Department, Salem OR  
Field Solicitor, Boise ID  
PN 440 (2), 933 (V.R.)

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

Willamette Basin Project, Oregon

CONTRACT FOR WATER SERVICE

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UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

Willamette Basin Project, Oregon

CONTRACT FOR WATER SERVICE

THIS CONTRACT, made this 13th day of December, 1990, pursuant to section 9(e) of the Act of August 4, 1939 (53 Stat. 1187), and section 8 of the Act of December 22, 1944 (58 Stat. 887, 891), (which acts are commonly known and referred to as the Reclamation Laws), the Flood Control Act of 1938 (53 Stat. 1222), and the Flood Control Act of 1950 (64 Stat. 170), between the UNITED STATES OF AMERICA, hereinafter referred to as the United States, represented by the Contracting Officer executing this contract, and John and Doris Kokkeler, 27599 Cox Butte Road, Junction City OR 97448, hereinafter referred to as the Contractor;

WITNESSETH, THAT:

Explanatory Recitals

2. WHEREAS, The United States has constructed and operates a system of multipurpose reservoirs in the Willamette Basin, Oregon, herein styled the Willamette Basin Project, from which there is a flow of water than can be used for irrigation of land and other beneficial uses, which flow, as it has been developed or as it will be augmented, was appropriated by the United States pursuant to the laws of Oregon for beneficial use under the Federal Reclamation Laws; and

3. WHEREAS, The United States of America entered into a contract on March 18, 1968, Contract. No. 14-06-100-6195, with Doris M. Kokkeler for an irrigation water supply from the Willamette Basin Project for lands owned by the Contractor; and

4. WHEREAS, the Contractor owns certain lands which do not have a right for natural flows and are not receiving an irrigation water supply from the Willamette Basin Project; and

5. WHEREAS, the Contractor has requested an irrigation water supply from the Willamette Basin Project for such lands; and

6. WHEREAS, it is desirable to terminate existing Contract No. 14-06-100-6195, dated March 18, 1968, and enter into this contract for all lands, including those served under that contract;

NOW, THEREFORE, in consideration of the premises and the payment by the Contractor to the United States of the charges in the manner hereinafter provided, it is agreed:

Termination of Prior Contract

7. Contract No. 14-06-100-6195, dated March 18, 1968, is being replaced by this contract and is no longer of any force and effect.

Lands for Which Water is Furnished: Limitations on Deliveries

8. The United States shall make available each year to the Contractor during the irrigation season from April 1 to September 30, inclusive, water from the Willamette Basin Project for the irrigation of land owned by or

served by the Contractor described as follows:

3.0 acres, NE 1/4 NW 1/4, Sec. 27, T.15S., R.5W, W.M.  
11.2 acres, NW 1/4 NW 1/4, Sec. 26, T.15S., R.5W, W.M.  
40.0 acres, NE 1/4 NW 1/4, Sec. 26, T.15S., R.5W, W.M.  
9.2 acres, SE 1/4 NW 1/4, Sec. 26, T.15S., R.5W, W.M.  
23.5 acres, NW 1/4 NE 1/4, Sec. 27, T.15S., R.5W, W.M.  
29.0 acres, NW 1/4 NW 1/4, Sec. 26, T.15S., R.5W, W.M.)  
2.0 acres, NE 1/4 NE 1/4, Sec. 27, T.15S., R.5W, W.M.)

Of the land described, not more than 117.9 acres are to be irrigated. The amount of water to be made available hereunder shall be that quantity which may be applied beneficially in accordance with good usage in the irrigation of the land above described, but in no event shall it exceed a total diversion of 294.75 acre-feet annually, measured at the point of delivery of said water.

#### Payments for Water

9. (a) An annual payment of \$176.85 for the first irrigation season shall be made to the United States at the time of executing this contract, and subsequent annual payments of \$176.85 will be due on or before April 1 of each succeeding irrigation season in advance of water use. This payment will entitle the Contractor to receive 117.9 acre-feet of stored water, hereinafter referred to as the base entitlement, for irrigation of the lands described above. Up to an additional 176.85 acre-feet may be purchased if available. For each additional acre-foot required, \$1.50 must be deposited with the Contracting Officer by April 1 of the year its use is anticipated. Payments for the base entitlement or additional water are nonrefundable regardless of the amount of water actually used.

(b) The annual charge set forth in (a) above is based on an initial rate of \$1.50 per acre-foot of water; Provided, that such annual charge shall not be less than \$50. From time to time, but not less often than

once every 5 years, the rate per acre-foot and the minimum charge shall be reviewed by the Contracting Officer and revised, if necessary, to cover costs to the United States for the irrigation water marketing program of the Willamette Basin Project. Any revision by the Contracting Officer will apply only to future charges and shall be announced by written notice to the Contractor at least 3 months prior to the beginning of the irrigation season to which the new rate would be applicable.

(c) All payments from the Contractor to the United States under this contract shall be made by the medium requested by the United States. The required medium of payment may include checks, wire transfers, or other types of payment specified by the United States. Except when otherwise specified by the United States, all payments shall be made by check.

(d) Payments required hereunder shall be made to the Bureau of Reclamation at the location described in Article 18 of this contract.

#### Contract Preparation Assignment Fee

10. (a) Upon execution of this contract, a \$100 fee for the preparation of this contract is due and payable by the Contractor to the United States.

(b) All future contract actions, including new contracts, contract amendments, supplements, and assignments will be charged a \$100 fee: Provided, That the fee shall be reviewed by the Contracting Officer and revised from time to time to cover costs to the United States.

### Charges for Delinquent Payments

11. (a) The Contractor shall be subject to interest, administrative and penalty charges on delinquent installments or payments, pursuant to section 11 of the Debt Collection Act of 1982 (Public Law 97-365). When payment is not received within 30 days of the due date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes 60 days delinquent, the Contractor shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent 90 days or more, the Contractor shall pay an additional penalty charge of 6 percent per year for each day the payment is delinquent beyond the due date. Further, the Contractor shall pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month prescribed by section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

(c) When a partial payment on a delinquent account is received, the amount received shall be applied first to the penalty and administrative charges, second, to the accrued interest, and third to the overdue payment.

### Furnishing of Water

12. (a) Upon payment of the water service charge(s) specified in subarticle 9(a) above, the United States will furnish up to 117.9 acre-feet of water to the Contractor from the Willamette Basin Project. The initial quantity or base entitlement shall be 117.9 acre-feet. An additional quantity of up to 176.85 acre-feet may be requested by the Contractor and shall be furnished on an if-and-when-available basis. No water shall be furnished if the Contractor is delinquent in payment of the required water service charge(s).



(b) Water for the purposes hereof shall be made available and measured at the following point(s) of diversion:

1390 feet south and 1320 feet east of the northwest corner of Sec. 26, T.15S, R.5W., W.M., and 660 feet south and 1080 feet east of the northwest corner of Sec. 26, T.15S, R.5W, W.M.

The Contractor shall receive said water at the point of diversion and shall be wholly responsible for securing said water at that point and diverting, conveying, and utilizing it. The water to be delivered hereunder shall be measured by means of measuring or controlling devices satisfactory to the Contracting Officer. Such devices shall be furnished, installed, and maintained by and at the expense of the Contractor, but they shall be and remain at all times under the control of the United States or of an appropriate State-appointed watermaster whose representative may at all times have access to them over any lands of the Contractor. All losses of water from seepage, evaporation, or other cause, below said point of measurement, shall be borne by the Contractor.

(c) The monthly supply of water hereunder diverted in any one month of the irrigation season shall not exceed 35 percent of the total maximum annual diversion set forth in subarticle 12(a) above. The Contractor shall, to the extent practicable, submit to the Contracting Officer an advance schedule as to the precise time of water deliveries. Changes in such schedule may be made only upon sufficient advance notice to the Contracting Officer to allow him to adjust releases to meet the new schedules. Upon the appointment of a State watermaster to govern diversions from the stream concerned, the Contractor shall be required to conform its diversions and releases to the control of the stream as established by the watermaster.

(d) The Contractor and all other entities heretofore or hereafter contracting with the United States for a right to use water from the Willamette Basin Project shall, to the extent of their base entitlement, have equal priority to the use of water from such project so far as that may be physically practicable and legally possible, without regard to the date of their respective contracts.

Special Conditions

13. (a) It is the responsibility of the Contractor to comply with the laws of the State of Oregon regarding the obtaining and perfecting of permits to divert water to the lands described in Article 8. Prior to executing this contract, the Contractor shall secure any easements from the Corps of Engineers which may be required for constructing facilities to divert and convey the stored water and provide written verification of such agreements to the Contracting Officer. The obligation of the United States to deliver water under this contract is subject to an operating plan for the Willamette Basin Project determined in accordance with the law governing the project.

(b) In the event the Contractor is not now a member of an irrigation district, water supply company, or other water user organization, this contract shall be terminated and water service hereunder shall cease automatically when water is made available to the lands described in Article 8 by such an organization to serve these and other lands presently irrigated or planned for irrigation in future years from the Willamette Basin Project.

#### Term of Contract

14. This contract shall become effective as of the date first above written and will continue in force for 40 years unless sooner terminated in accordance with Articles 13 or 15 or by agreement of the parties hereto.

#### Termination of Contract

15. This contract may be terminated and water service hereunder shall cease at the option of the United States at any time if the Contractor is delinquent in payment of the water service charge for a period of 30 days or upon failure of the Contractor to abide by any notice, order, rule, or regulation of the United States or the State of Oregon now or hereafter established affecting water service hereunder.

#### United States Not Liable for Water Shortages--Adjustments

16. On account of drought or uncontrollable forces, there may occur a shortage in the total quantity of water available for furnishing to the Contractor by the United States pursuant to this contract. In no event shall any liability accrue against the United States or any of its officers, agents, or employees for any damage direct or indirect arising from such shortages. If such a shortage occurs, the United States will apportion the available water supply among the Contractor and others entitled by existing and future contracts to receive water from the Willamette Basin Project.

#### Disclaimer

17. No provision of this contract, nor of any renewal thereof, nor the furnishing of water hereunder will be construed to bind the United States after the expiration of this contract as the basis of a permanent water right.

Because of possible fluctuations in reservoir surface elevations and downstream flows associated with the Willamette Basin Project, the United States does not guarantee the availability of water at the point of the Contractor's diversion facilities as they may now be constructed or constructed hereafter. Further, the United States will not be held responsible for any acts or omissions of the Contractor's agents or of persons to whom water is furnished.

#### Notices


18. Any notice, demand, or request authorized or required by this contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Regional Director, Pacific Northwest Region, Bureau of Reclamation, Box 043, 550 West Fort Street, Boise, Idaho 83724, and on behalf of the United States, when mailed, postage prepaid, or delivered to John and Doris Kokkeler, 27599 Cox Butte Road, Junction City OR 97448. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

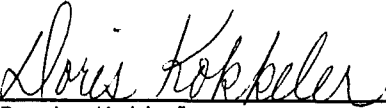
#### General Provisions

19. The general provisions applicable to this contract are listed below. The full text of these general provisions is attached as Exhibit A and is hereby made a part of this contract.

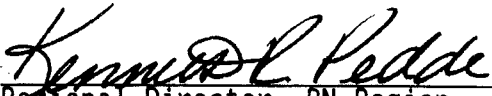
- a. CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS
- b. WATER AND AIR POLLUTION CONTROL
- c. QUALITY OF WATER
- d. EQUAL OPPORTUNITY
- e. COMPLIANCE WITH RECLAMATION LAWS
- f. ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED
- g. OFFICIALS NOT TO BENEFIT
- h. WATER CONSERVATION

IN WITNESS WHEREOF, the parties hereto have signed their names the day and year first above written.

  
\_\_\_\_\_  
John Kokkeler

  
\_\_\_\_\_  
Doris Kokkeler

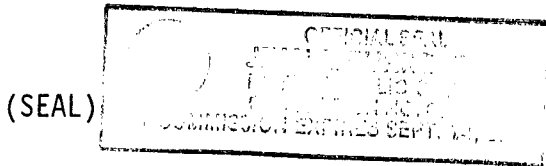
UNITED STATES OF AMERICA

  
\_\_\_\_\_  
ACTING Regional Director, PN Region  
Bureau of Reclamation  
Box 043 - 550 West Fort Street  
Boise ID 83724-0043

STATE OF OREGON )  
 ) : ss  
County of Lane )

On this 30<sup>th</sup> day of Oct, 1990, before me,  
a Notary Public, personally appeared John Kotkeles and Doris Kotkeles  
known to me to be the persons whose names are subscribed to the within  
instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my  
official seal as of the day and year first above written.



[Signature]  
Notary Public in and for the  
State of  
Residing at Junction City, OR.  
My commission expires:

\*\*\*\*\*

STATE OF IDAHO )  
 ) : ss  
County of Ada )

On this 13<sup>th</sup> day of December, 1990, personally appeared  
before me Kenneth R. Rodde, to me known to be the official  
of the United States of America that executed the within and foregoing  
instrument and acknowledged said instrument to be the free and voluntary act  
and deed of said United States, for the uses and purposes therein mentioned,  
and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my  
official seal as of the day and year first above written.

(SEAL)

[Signature]  
Notary Public in and for the  
State of Idaho  
Residing at Boise  
My commission expires: 5-23-94

GENERAL PROVISIONS --- WILLAMETTE BASIN PROJECT

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

a. The expenditure or advance of any money or the performance of any obligation of the United States under this contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations under this contract. No liability shall accrue to the United States in case such funds are not appropriated or allotted.

WATER AND AIR POLLUTION CONTROL

b. The Contractor, in carrying out this contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Oregon, and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

QUALITY OF WATER

c. The operation and maintenance of project facilities shall be performed in such manner as is practicable to maintain the quality of raw water made available through such facilities at the highest level reasonably attainable, as determined by the Contracting Officer. The United States does not warrant the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

EQUAL OPPORTUNITY

d. During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the said labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the such rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### COMPLIANCE WITH RECLAMATION LAWS

e. The parties agree that the delivery of irrigation water or the use of Federal facilities pursuant to this contract is subject to Reclamation law, as amended and supplemented, including, but not limited to, the Reclamation Reform Act of 1982 (Public Law 97-293).

#### ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

f. The provisions of this contract shall apply to and bind the successors and assigns of the parties [Bhereto, but no assignment or transfer of this contract or any right or interest therein shall be valid until approved in writing by the Contracting Officer.

#### OFFICIALS NOT TO BENEFIT

g. No Member of or Delegate to Congress, Resident Commissioner or official of the Contractor shall benefit from this contract other than as a water user or landowner in the same manner as other water users or landowners.

#### WATER CONSERVATION

h. Prior to the delivery of water provided from or conveyed through federally constructed or federally financed facilities pursuant to this contract, the Contractor shall develop an effective water conservation program acceptable to the Contracting Officer. The water conservation program shall contain definite water conservation objectives, appropriate economically feasible water conservation measures, and time schedules for meeting those objectives. At subsequent 5-year intervals, the Contractor shall submit a report on the results of the program to the Contracting Officer for review. Based on the conclusions of the review, the Contracting Officer and the Contractor shall consult and agree to continue or to revise the existing water conservation program.